

1 take administrative notice of a court decision.

2 DIRECTOR MALONE: Whether we can take
3 administrative notice, I'm not so sure that's the
4 question as opposed to if we do take administrative
5 notice the procedure thereafter, the statutory
6 obligation I believe to provide an opportunity to rebut
7 information so noticed. That's what I thought you were
8 referring to.

9 MR. HICKS: Yes. What I was trying to
10 say was if they request an opportunity to rebut, then
11 that would certainly be an issue. I just don't know
12 whether that will be their request or not.

13 DIRECTOR MALONE: We'll hear from the
14 other parties.

15 MR. HOPKINS: This is Mike Hopkins for
16 AT&T. I guess I'm not clear on what BellSouth's
17 purpose is for the administrative notice. If it's to
18 take notice of some kind of factual findings, I don't
19 think that would be appropriate here because it is two
20 different records between what was before the TRA and
21 what was before the FCC. If it's for some kind of
22 legal principle, this is under both state and federal
23 law in this docket, so I'm not sure if that's going to
24 be controlling on the TRA, but they can decide that for
25 themselves.

1 So I think it -- from our perspective,
2 it goes to what purpose is the TRA going to take
3 administrative notice of this -- their order.

4 MR. WALKER: I don't really believe
5 that it's necessary for the Agency to take judicial
6 notice under that statute of the FCC's decisions in
7 order for the Agency to read and cite for decisions for
8 whatever purposes the TRA may think appropriate in
9 making its decision.

10 DIRECTOR MALONE: Mr. Hicks.

11 MR. HICKS: Thank you, Director
12 Malone.

13 I would just point out a couple of
14 things. First, I believe that position that Mr. Walker
15 just espoused is inconsistent with the position the
16 CLECs took during the hearing when they requested that
17 other decisions -- that you take administrative notice
18 of other decisions. Here we have the FCC itself ruling
19 on the same issues that we talked about during the
20 hearing, so this, in BellSouth's view, is much more
21 probative and important than the other decisions.

22 So to have them argue that other
23 decisions prior to the FCC's ruling should be -- that
24 you should take administrative notice and then not take
25 administrative notice of this decision seems to me to

1 be inconsistent.

2 With respect to Mr. Hopkins' comments
3 about whether or not this is controlling, obviously
4 that's for you to decide, but we do think it would be
5 critical for you to at least consider the FCC's rulings
6 when you make your deliberations.

7 DIRECTOR MALONE: Let me ask you,
8 Mr. Hicks, on -- when notice is taken of an order
9 involving a legal issue, that's a matter that the
10 Agency takes into account, deliberates, interprets as
11 it will consistent with the hierarchy of authority, of
12 course. But on the factual issues, which I have to
13 assume that's part and parcel of the request here, how
14 do you respond to Mr. Hopkins' concern?

15 MR. HICKS: Well, as Mr. Hopkins well
16 knows, AT&T and the other CLECs participated vigorously
17 in this FCC proceeding. So they cannot be heard today
18 to say that they can't or didn't have the opportunity
19 to respond to the factual conclusions of the FCC. They
20 were very much a part of that proceeding and fought
21 BellSouth's application vigorously.

22 Now that the FCC has ruled on those
23 factual matters, all we are asking is that the
24 Directors take administrative notice of the decision
25 and consider it along with the other matters that the

1 Directors will consider. It can be consistent with the
2 Authority's --

3 DIRECTOR MALONE: I understood
4 Mr. Hopkins to distinguish the information that was
5 being reviewed in our evidentiary record is what would
6 form the basis of our deliberations and that the record
7 presented before the FCC is what formed the basis of
8 the order, and I think that's more what Mr. Hopkins is
9 saying. There's no representation that those are the
10 same, and so if they are not the same, the findings
11 could be different.

12 Mr. Hopkins, I don't mean to --

13 MR. HOPKINS: No. You're saying what
14 I was trying to say more clearly. And also there was a
15 different procedural structure. There were live
16 witnesses in the TRA hearing where there wasn't at the
17 FCC. I think the -- on this issue I would -- I would
18 venture or assert that the TRA has a better record than
19 the FCC did.

20 DIRECTOR MALONE: Well, I don't want
21 to get into a discussion of a better record.

22 Mr. Hicks, I would like to hear your
23 comments on Mr. Hopkins' original concern as stated on
24 the different records.

25 MR. HICKS: Well, first of all, it's

1 not surprising that the CLECs would choose this order
2 among all the other orders we've talked about in the
3 last six years to oppose your taking administrative
4 notice of. I think that the order speaks to the same
5 type of issues, the same type of arguments, the same
6 type of analysis, the same type of disputes that we had
7 in the hearing that the Directors had here in
8 Tennessee.

9 So it's really almost unbelievable to
10 me that the CLECs would take the position that somehow
11 you should not take administrative notice of this among
12 all orders. I agree that the records are different and
13 the procedures are different, but so are the records
14 and the procedure different when the U.S. Supreme Court
15 rules, and we take administrative notice of those
16 decisions just like we do administrative notice of the
17 Sixth Circuit decisions or even U.S. District Court
18 decisions. And that's been the practice of the
19 Authority, and I think it's an appropriate practice.

20 So to single this order out as the
21 CLECs are trying to do and somehow say it's different,
22 I think is just -- it's just not plausible, and I think
23 that the fact that the procedures are a little
24 different or the record is different is not a basis for
25 not taking administrative notice of the order. It

1 never has been in the past.

2 If we have a ruling, as I said, from
3 the U.S. Supreme Court, the same arguments would apply.
4 The process is different. There's no live testimony.
5 The evidence may be different, but we still take
6 cognizance of the fact that the U.S. Supreme Court has
7 ruled on an issue and we -- I say "we" -- the Directors
8 consider that in their deliberations.

9 DIRECTOR MALONE: Any additional
10 response, Mr. Walker or Mr. Hopkins?

11 MR. WALKER: If all --

12 MR. HOPKINS: I feel -- I can see
13 taking administrative notice of any legal conclusions
14 for whatever they're worth, but as far as the factual
15 record, I don't think it's appropriate for the TRA to
16 take into account the factual findings in the FCC
17 record because that's not the record before the TRA.

18 DIRECTOR MALONE: Mr. Walker?

19 MR. WALKER: I would simply add that
20 if all we're doing is recognizing that the decision is
21 out there and we can cite it and we agree or not agree
22 with it, as you think fit, that's fine, and that's what
23 we do all the time. Just -- and we do it really as a
24 matter of -- not because we have to, just because of
25 administrative convenience. You know, the idea of

1 taking judicial notice of court -- I don't think that's
2 what the statute was intended to do. We've just gotten
3 in the habit of doing it.

4 If that's all we're talking about,
5 that's fine, and I don't think -- and I don't see
6 BellSouth as really asking for anything more than that.
7 I don't see Mr. Hicks as saying somehow the evidentiary
8 findings by the FCC would become part of the
9 evidentiary record of this proceeding. What I
10 understand BellSouth is saying is we simply recognize
11 that the decision is there and use it for whatever
12 weight it may have, just as we do all of those other
13 decisions.

14 MR. HICKS: Well, I would just add
15 that in the past -- in the six years that I've been
16 practicing before the Authority, we have never taken
17 administrative notice as Mr. Hopkins proposes of one
18 part of the order but not the other. I have never
19 heard of that. You take administrative notice of the
20 decision, and it's up to you as the Directors to study
21 the decision like you study the other matters and
22 consider it.

23 I think this is an artificial
24 distinction and a rather transparent attempt by the
25 CLECs to keep you from focusing on what is very

1 relevant and very significant, and that is the FCC
2 rulings that relate to the issues at hand.

3 DIRECTOR MALONE: Mr. Walker, let me
4 ask you, assume that the FCC decision was issued
5 yesterday and BellSouth filed this same request
6 yesterday. You stated that it would be up to the
7 Agency to agree or disagree. How would the Agency do
8 that in such a -- we may not be far from that
9 circumstance.

10 MR. WALKER: You know, it's just like
11 the Supreme Court decision last week in the Eighth
12 Circuit. Now, that decision is there. It may or may
13 not have a bearing on any decision you make or any
14 order you write, but that doesn't mean that we have to
15 stop the proceeding and take administrative notice of
16 that Supreme Court decision.

17 To me it's like any other piece of
18 precedent. It has findings which may or may not be
19 applicable to what you're doing, but it's not
20 necessarily part of the evidentiary -- it's not part of
21 the evidentiary record in the same sense the testimony
22 from that witness stand is. It's just another legal
23 opinion which -- whose relevance depends on the
24 particular case.

25 DIRECTOR MALONE: Chairman Kyle, if

1 there are no other questions before the parties -- and
2 I appreciate your indulgence. You might want to stay
3 temporarily. I would like to request a five-minute
4 recess.

5 CHAIRMAN KYLE: All right. We'll
6 recess five minutes.

7 (Recess taken from 9:36 to
8 9:55 a.m.)

9 CHAIRMAN KYLE: All right. We are
10 finished with our recess. Any further questions,
11 Director Malone?

12 DIRECTOR MALONE: No.

13 CHAIRMAN KYLE: Did you just want
14 those comments or did you have a motion?

15 DIRECTOR MALONE: I always have
16 motions. Based on BellSouth's request, I would move
17 that the Agency take notice of the document as
18 requested and that parties have the opportunity to,
19 according to the statute, rebut the information noticed
20 and then that the Agency set the matters for
21 deliberations thereafter. I would move that the party
22 wishing to comment or rebut on the information noticed
23 would do so on or before two o'clock a week from today.

24 Mr. Collier, do we generally have a
25 response period, or does just the statute give you an

1 opportunity to rebut the document?

2 MR. COLLIER: The statute affords the
3 opportunity to rebut and set the time.

4 DIRECTOR GREER: I agree with the
5 motion in part. I don't agree with the motion in its
6 entirety. I agree with the motion to take judicial
7 notice, and I have no problem with the parties
8 commenting or not commenting however they may feel.

9 To delay the deliberations on Phase
10 One does not make sense to me whatsoever. I don't
11 understand it, and I'm happy to hear any argument as to
12 why we should, but there is nothing in that order that
13 affects a decision that I am prepared to make today on
14 Phase One.

15 So that's my comment. As I say, I'm
16 happy to grant the motion in part but not in its
17 entirety.

18 CHAIRMAN KYLE: Of course I take
19 judicial notice of FCC actions, and I'm with
20 Commissioner Greer, I'm ready to move forward.

21 DIRECTOR MALONE: Well, that having
22 been decided -- in this docket, the Authority must
23 determine the ability of BellSouth's OSS to provide
24 wholesale services and elements in a nondiscriminatory
25 manner as mandated by state and federal regulations.

1 BellSouth has a duty to provide nondiscriminatory
2 access to its network. In other words, BellSouth must
3 provide wholesale services to competitors in a manner
4 and quality that is the same in all material respects
5 as equivalent services that BellSouth itself uses to
6 provide retail services.

7 In determining its compliance with
8 state and federal law, BellSouth has elected to
9 demonstrate nondiscriminatory access to its network
10 elements by showing that its systems evaluated herein
11 are the same in all material respects to those systems
12 or processes that have been tested or are being tested
13 by an independent third party in Georgia and Florida.

14 In arriving at these decisions, I've
15 adopted and employed BellSouth witness McElroy's
16 definition of "regionality." That is the applications
17 and interfaces implemented and available that are
18 identical across the nine-state region. Identical is
19 one unique set of software coding and configuration
20 installed -- installed on either one or multiple
21 computer servers that support all nine states in an
22 equitable manner.

23 The processes, personnel, and work
24 center facilities are consistently available and
25 employed across the nine-state region, and there are no

1 significant aspects to the processes, personnel, or
2 work center facilities that would provide one state
3 greater service level or benefit than the other states
4 in the nine-state region.

5 Additionally, I've concluded that
6 where any OSS component is found to not be regional,
7 then the process of which that component is a part is
8 necessarily not regional as well.

9 I will begin with pre-ordering. After
10 reviewing the Georgia and Florida master test plan
11 submitted by BellSouth and the evidence provided during
12 the hearing, I have concluded that BellSouth has
13 successfully demonstrated the regionality of TAG, LENS,
14 RoboTAG, and LFACS. BellSouth, however, failed to
15 provide sufficient evidence that its loop make up
16 process and its Legacy systems, RSAG and ATLAS, are
17 regional. Furthermore, BellSouth failed to produce any
18 evidence to support its claim of regionality for many
19 methods, processes, and systems identified in the
20 master test plans that included but were not limited to
21 Fax Server, EXACT, CLEC reports, Capacity Management,
22 Force Models, ISO Quality System, and Performance
23 Measurement Plan.

24 Based on BellSouth's failure to carry
25 its burden in demonstrating the regionality of the

1 majority of its pre-ordering systems, methods, and
2 procedures, I have no option but to conclude that
3 BellSouth's pre-ordering OSS is nonregional, and I so
4 move.

5 DIRECTOR GREER: Is that the entirety
6 of your motion? Are you going to make additional
7 comments?

8 DIRECTOR MALONE: I think it will be
9 appropriate to break it up.

10 DIRECTOR GREER: I second your motion.

11 CHAIRMAN KYLE: That will be fine with
12 me, however you-all want to take it; however, I'm going
13 to hold my vote to the end.

14 DIRECTOR MALONE: The next item is
15 ordering. BellSouth asserts that its OSS for ordering
16 is regional and that its systems, processes, and
17 centers that exist to support CLEC ordering are either
18 the same or designed to function in the same manner.
19 BellSouth submitted the PricewaterhouseCoopers
20 attestation report in support of its assertion as well
21 as the CLEC ordering manual. PricewaterhouseCoopers
22 concluded that BellSouth's systems are regional and
23 that there are no material differences between
24 BellSouth Service Order Negotiation System and its
25 Direct Order Entry and its Local Service Order Centers.

1 Upon review of the record in this
2 proceeding and of PricewaterhouseCoopers' work, it was
3 clear that PricewaterhouseCooper reviewed BellSouth's
4 system for sameness, but it did not or was not engaged
5 to validate that BellSouth's systems produced the same
6 or substantially the same results. A conclusive
7 finding of regionality, as is needed here, cannot be
8 reached absent such an investigation. A conclusionary
9 prediction of regionality based on sameness disregards
10 the ultimate goal of performance evaluation.

11 I have moreover concluded that a
12 review of the Georgia and Florida Test Plan
13 demonstrates that BellSouth has proved the regionality
14 of TAG, LENS, EDI, CSOTS, as well as the BellSouth
15 Business Rules for Local Ordering. However, BellSouth
16 did not provide sufficient evidence to prove that its
17 Electronic Legacy Systems and the Manual Legacy Work
18 Groups are regional.

19 Additionally, BellSouth did not at all
20 address the regionality of many systems including but
21 not limited to the following: Corporate Real Estate
22 Process Flow, CLEC reports, BellSouth Force Models,
23 Performance Measurement Plan, the API Guide, RoboTAG
24 User Guide, LENS User Guide, EDI Specifications,
25 Products and Services Interval Guide, the LISC,

1 Business Rules Data Dictionary, and others.

2 Therefore, I would conclude that
3 BellSouth's ordering system is nonregional, and I so
4 move.

5 DIRECTOR GREER: Second.

6 CHAIRMAN KYLE: I will hold my vote to
7 the end.

8 DIRECTOR MALONE: The next item is
9 provisioning. BellSouth insists that its provisioning
10 and maintenance flow are the same across all nine
11 states, supported by common methods, procedures, and
12 systems and that it cannot be expected to achieve
13 identical performance in each state because of many
14 variables beyond its control such as government
15 relations, weather, economic conditions, and other
16 variables. BellSouth further contends that sameness of
17 system results are not relevant and that, instead,
18 sameness is demonstrated, according to an FCC
19 determination, by showing that electronic processes use
20 either the same systems or systems that reasonably can
21 be expected to behave in the same way.

22 The record in this matter demonstrates
23 that BellSouth has published a single list of Business
24 Rules for Local Ordering, and there exists sufficient
25 supports that these rules are regional. BellSouth has

1 likewise demonstrated on this issue, as it has done so
2 on others, that its EDI, LENS, and LFACS are regional.
3 BellSouth has not, however, produced any evidence to
4 demonstrate that among other work groups -- among other
5 groups such as WMC and CPG, its Address/Facility
6 Inventory Group that supports its Tennessee operations
7 performs in the same way as its Address/Facility
8 Inventory Group that supports Georgia and Florida.

9 In applying either a standard of
10 expected behavior or a standard of actual performance,
11 which is preferable, I have concluded that the
12 relatively elevated degree of manual processing
13 involved in BellSouth's provisioning systems likely
14 results in either actual performance or expected
15 behaviors that are dissimilar across BellSouth's
16 region.

17 Moreover BellSouth failed to submit
18 sufficient evidence to demonstrate regionality of the
19 following OSS components: BellSouth SQM, C.O. Methods
20 and Procedures, CLEC Facilities-Based Advisory Guide,
21 CLEC Report on BellSouth's Web site, CCSS, Complex
22 Resale Support Group Methods and Procedures, DSAP,
23 EXACT, Job Aid for CLEC Pending Facilities Report on
24 BellSouth's Interconnection Web site, LEO, LIST, LNP
25 Gateway, LON, NISC, NISC Methods and Procedures, ORBIT,

1 Pending Order Status Job Aid, Products and Service
2 Interval Guide, RNS, ROS, SOAC, SOCS, SWITCH, TAG, API
3 Guide, Technicians Methods and Procedures, TIRKS, UNE
4 Center Methods and Procedure, and WFA log notes.

5 Based on the foregoing, I move that
6 BellSouth's provisioning OSS is nonregional.

7 DIRECTOR GREER: Second.

8 CHAIRMAN KYLE: Vote held to the end.

9 DIRECTOR MALONE: The next item is
10 billing. BellSouth's describes its billing and
11 collections group as a single group located in Atlanta
12 and Birmingham that provides CLECs across nine states
13 with a single point of contact to establish master
14 accounts and for billing and collections issues.
15 BellSouth maintains its billing and collection group
16 supports all interexchange carriers and CLECs using the
17 same processes and procedures.

18 Although BellSouth's assertion of
19 regionality may be supportable, it simply has not
20 produced sufficient evidence necessary to determine the
21 regionality of any of the OSS components with which
22 BellSouth provides billing services. Specifically,
23 BellSouth failed to submit sufficient evidence to
24 support its assertion that the following systems are
25 regional: ACD, assignment of responsibility for

1 function, BDATS, BIBS, BOCABS, BOCRIS, CABS, CMIA,
2 CMTS, compliance with OBF guidelines, Connect Direct,
3 CRIS, customer Internet documentation, dedicated
4 personnel assigned to task, help desk specifically
5 assigned to these tasks, ICABS, Internet documentation
6 on bill re-send process.

7 Therefore, I move that BellSouth's
8 billing OSS is nonregional.

9 DIRECTOR GREER: Second.

10 CHAIRMAN KYLE: I'll save my vote to
11 the end.

12 DIRECTOR MALONE: Finally, maintenance
13 and repair. BellSouth's assertion of regionality for
14 maintenance and repair interfaces is supported by its
15 TAFI system, which BellSouth asserts provides CLECs
16 with functionality that is superior to its own TAFI
17 because it can process both residence and business
18 trouble reports on the same processor.

19 CLECs assert that the electronic and
20 manual legacy systems that support maintenance and
21 repair functions in Tennessee have a low degree of
22 relative regionality and that the Georgia OSS testing
23 did not test all of them.

24 Unfortunately, BellSouth has here
25 again asserted regionality for its systems but has

1 produced no evidence to support its assertion. As
2 alluded to earlier, any meaningful measure, in my
3 opinion, of regionality must produce comparable
4 results. Anything less does nothing to support an
5 extrapolation of nondiscrimination in providing network
6 access through a showing of regionality.

7 For example, BellSouth contends that
8 its I&M work forces operate under a regional
9 organization structure and are supposed to use regional
10 methods and engage in regional training. BellSouth,
11 however, produced no evidence to show that I&M work
12 forces serving Tennessee actually perform in the same
13 manner or similarly to those serving Georgia and
14 Florida. BellSouth's failure to provide sufficient
15 support demonstrating regionality also extends to its
16 WMOC, WFA, and LMOS.

17 Additionally, BellSouth neglected to
18 present sufficient evidence to allow a determination on
19 the regionality of the following OSS components: CO
20 Methods and Procedures, CLEC TAFI, ECTA, I&M Methods
21 and Procedures, ISO 9002 Audit, Joint Implementation
22 Agreement for ECTA, LMOS, Operational Understanding,
23 RCMAG Methods and Procedures, TAFI, UNE Center Methods
24 and Procedures, WMC Methods and Procedures.

25 Therefore, I move that BellSouth's

1 maintenance and repair OSS is also nonregional.

2 DIRECTOR GREER: I agree.

3 Director Malone in agreeing to your
4 five motions, I have some comments that I would like to
5 add in support of my position and in support of what
6 you have said, if that's appropriate at this time.

7 BellSouth neither provided the
8 complete matrix of its OSS components that the
9 Authority sought before the hearing, nor did its
10 witnesses review the incomplete matrix that BellSouth
11 filed. Through the hearing, BellSouth did not supply,
12 nor did the intervenors draw out, much useful
13 information pertaining to many of the OSS processes
14 identified in the Georgia and Florida master test plan.

15 Generally, the parties focused their
16 cases on issues related to pre-ordering and ordering.
17 Even so, certain important information regarding the
18 regionality of pre-ordering and ordering systems and
19 processes could not be discussed at the hearing. That
20 is because BellSouth was unable or did not respond to
21 AT&T's Interrogatory 36 until nearly three months after
22 the hearing on regionality. Although hindsight is
23 20/20, that delay was much unfortunate with potential
24 ramifications like long distance lines extending well
25 past Tennessee borders.

1 BellSouth claims that Interrogatory 36
2 was immaterial to the regionality issue. I
3 respectfully disagree. In fact, that discovery
4 response may be so material to the Authority's
5 regionality decision that it mitigates the harm to the
6 Authority's fact-finding efforts from the parties'
7 failure to provide necessary and useful information at
8 the Phase One hearing.

9 Director Malone, in his first motion,
10 adopted McElroy's definition of "regional." I want to
11 comment on that as it relates to Interrogatory 36. In
12 addition to other parts of the evidentiary record,
13 BellSouth's response to Interrogatory 36 shows that
14 BellSouth's OSS does not meet Mr. McElroy's definition.

15 My analysis of the data from
16 BellSouth's response confirms that for most of 2001 a
17 critical part of BellSouth's OSS performed in a
18 statistically significant and equitable manner across
19 the nine-state region. Further, the data from
20 BellSouth's response to Interrogatory 36 identifies
21 significant aspects to BellSouth's OSS that, without
22 thorough explanation of or modification to the OSS
23 performed after January 1, 2002, would produce
24 disparate performance across the states in BellSouth's
25 region.

1 I have an exhibit that I would like to
2 pass out at this time. Mr. Sapper has a copy of that
3 and would pass it out, and you are welcome to pass it
4 out to the parties at the table as well. Pass it out
5 to the Directors first.

6 And I would like for the court
7 reporter to enter this into the record as if I had read
8 it into the record.

9
10 (The document titled "Greer
11 Exhibit 1, Docket No.
12 01-00362, 'Percent
13 Flow-Through' for Local
14 Number Portability'" is
15 entered into the record as
16 if read.)

17
18
19
20
21
22
23 (The balance of this page
24 left blank intentionally.)
25

1 DIRECTOR GREER: What Mr. Sapper is
2 handing out is a statistical analysis from which I will
3 interpret some of what BellSouth's data shows. I would
4 like to, as I have said, attach it to today's
5 transcript as if I had read it into the transcript.

6 Page 1 represents the raw performance
7 data taken from BellSouth's response to AT&T's
8 Interrogatory 36. On page 3 of that response BellSouth
9 states that the percent flow through column is the
10 number that reflects the FCC's definition of "flow
11 through." It reflects realistic performance and, thus,
12 is the column on which the Authority should focus when
13 looking at BellSouth's flow through performance.

14 As you can see from a cursory
15 inspection of the data on this page, there is a great
16 deal of variation in the numbers across time and states
17 and regions. Incidentally, AT&T pointed this out --
18 pointed out this superficial variation in Footnote 20
19 on page 10 of its April 19th, 2002 publicly available
20 ex parte letter to the FCC concerning the Georgia/
21 Louisiana application.

22 On several occasions, BellSouth and
23 its witnesses, like Mr. Pate, have asserted that
24 product differences alone would account for the
25 different results from state to state, when by

1 definition any products not designed to flow through
2 would fall out for manual handling.

3 Another BellSouth witness,
4 Mr. Heartley, asserted that for some parts of
5 BellSouth's OSS local weather or permitting
6 requirements could cause differences in performance
7 across states. My analysis of BellSouth's reported
8 Local Number Portability Percent Flow Through, however,
9 leads me to disagree with BellSouth's explanations for
10 the disparities in its performance data across states.

11 I focus on Local Number Portability
12 for a few reasons. First, LNP is crucial to the
13 development of local competition. Second, LNP, like
14 other OSS-dependent wholesale services, has very
15 little, if any, associated intrinsic product variation.
16 Third, it is my understanding that LNP transactions do
17 not depend on local weather or permitting requirements,
18 as discussed by BellSouth witness Mr. Heartley.

19 Focusing on LNP flow through at least
20 partially obviates the need to control for the
21 underlying relationships between different months and
22 different states and the identities of the CLECs and
23 the products they are ordering. Thus, by focusing on
24 LNP flow-through data, it is reasonable to question the
25 merits of BellSouth's oft-repeated explanation for

1 interstate disparities in its flow-through performance
2 data.

3 My analysis raises some questions or
4 highlights questions already raised, including some
5 about the regionality of BellSouth's OSS. For example,
6 notice from page 1 how BellSouth's reported performance
7 in the former BellSouth states exceeds the performance
8 reported for the former South Central Bell states, thus
9 bringing up the average regional performance, as
10 calculated by me.

11 One also should note the fact that
12 BellSouth's reported regional performance figures
13 exceed the corresponding regional numbers that I
14 calculate in every month for which BellSouth provided
15 data. It is my understanding that BellSouth uses pool
16 data to generate its regional figure. If the
17 state-specific data from BellSouth's response to
18 Interrogatory 36 are included in that pool data, simple
19 arithmetic says that other data BellSouth adds to the
20 pooled data pull the BellSouth-produced regional
21 numbers above the nine-state averages that I
22 calculated.

23 It would be interesting to see how the
24 other data BellSouth adds to the pool as well as the
25 missing data from January and February fit the trends

1 we are discussing here.

2 On page 2 I would like to point out
3 that the apparent and curious correlation between the
4 state data and the data I calculate labeled "BellSouth"
5 and BellSouth's data labeled "Region." Note that
6 compared to Tennessee and Louisiana, Georgia and
7 Florida data are closer in value to the regional data
8 that BellSouth provided.

9 Page 3 demonstrates the correlation
10 between individual state data and regional data that I
11 calculated and that BellSouth produced. Looking along
12 the last two rows of the matrix, notice that Tennessee
13 and Louisiana data are positively correlated with the
14 data that I derived and less correlated with the
15 regional data BellSouth produced, while the opposite
16 holds for Georgia and Florida data.

17 Those correlation coefficients are
18 fairly widely spread, however, and there are
19 differences in the statistical characteristics among
20 the individual state samples, as shown on page 4. To
21 control for those differences, I employed an ordinary
22 least squares regression model described on page 5. In
23 my model, LNP Percent Flow Through is the dependent
24 variable -- the variable whose variation that the
25 independent variable are supposed to explain.

1 The independent variables are binary
2 variables, also called "dummy variables," representing
3 the different states in different months associated
4 with the 90 data points that BellSouth provided. For
5 example, if a data point is from Alabama and the month
6 of April, the Alabama and the April variables would be
7 assigned a value of one while the other explanatory
8 variables for that observation would be set to zero.

9 For the regression to work properly,
10 the independent variables for Tennessee and March are
11 omitted. Because of this, the estimated effects of
12 data coming from different states or months are
13 interpreted as being relative to the corresponding
14 effects of Tennessee and March respectively.

15 The ordinary least squares regression
16 results on page 5 show that, statistically speaking,
17 relative to its LNP percent flow through performance in
18 Tennessee, BellSouth's performance is about 20 percent
19 better in Georgia and 16 percent better in Florida. It
20 is also about 20 percent better in Kentucky, but it is
21 about 9 percent worse in Alabama and 28 percent worse
22 in Mississippi. Meanwhile, BellSouth's performance in
23 Louisiana and the Carolinas is not statistically
24 different from its performance in Tennessee.

25 Thus, for at least ten months of 2001,

1 the regression analysis shows that BellSouth's
2 performance in Tennessee is relatively worse in states
3 conducting testing, but compared to the other states,
4 BellSouth's performance is somewhat better, sometimes
5 worse and sometimes not different.

6 I'm confident in these interpretations
7 because judging by the F-test statistic and the
8 R-squared and adjusted R-squared statistics, this model
9 is statistically valid and explains 60 to 70 percent of
10 the variance in the 90 data points provided by
11 BellSouth. For this time of regression model, my
12 model's explanatory power is quite high.

13 The ability of these explanatory
14 variables to explain such great -- to explain such a
15 great deal of variation in BellSouth's percent flow
16 through data that BellSouth recommends using, for LNP
17 at least, contradicts testimony in support of the
18 regionality of BellSouth's pre-ordering and ordering
19 OSS, even using BellSouth's definition of
20 "regionality."

21 According to my analysis, the
22 disparities in BellSouth's performance in Georgia,
23 Florida, and Tennessee, for example, do not happen by
24 chance. These disparities are in large -- excuse me --
25 are large in magnitude and in statistical significance.

1 Moreover, these results are significant in policy terms
2 given LNP's fundamental importance to the development
3 of local competition.

4 Next I would like to comment on the
5 FCC's reliance on the Pricewaterhouse attestation or at
6 least BellSouth's endorsement of the attestation in
7 finding that BellSouth's OSS is regional.

8 One problem with the FCC's treatment
9 of the attestation is the order's repeated erroneous
10 reference to the attestation as an audit. The word
11 "attestation" and the word "audit" have different
12 technical and legal meanings. I do not know what was
13 in the FCC's record on this point, but as the
14 Pricewaterhouse witness, Mr. Lattimore, explained
15 during the Authority's Phase One hearing, BellSouth did
16 not hire his firm to provide or perform an audit
17 assessing the regionality of BellSouth's OSS.

18 In the past, this criticism might have
19 seemed nitpicky, but I think recent events in
20 telecommunications and other utility sectors have
21 demonstrated to members of government, industry, and
22 the consuming public the importance of maintaining, as
23 strictly as possible, the accounting profession's legal
24 and technical standards. Recent events highlight
25 actual and potential ramifications of misapplying, not

1 appreciating, or blindly relying on authoritative
2 interpretations of those standards.

3 Even under Pricewaterhouse's
4 definition of "attestation," however, its work is
5 seriously flawed by several reasons brought out by our
6 Phase One proceedings. Although BellSouth mentions
7 software coding in its definition of "regional,"
8 Pricewaterhouse did not analyze OSS code, nor did it
9 adequately analyze actual performance data.

10 As for the rigorousness of other
11 aspects of the attestation, it is noteworthy that
12 Pricewaterhouse reviewed BellSouth's highly complex
13 ordering process in only one month. In my opinion,
14 even if Pricewaterhouse aimed to follow
15 industry-standard attestation practices, such as those
16 described by Pricewaterhouse at the Phase One hearing,
17 Pricewaterhouse did not perform a satisfactory
18 examination of the ordering process in the single month
19 it spent on that examination.

20 Even if the people working on the
21 attestation are telecommunications experts who are
22 intimately familiar with BellSouth's operations, as
23 Mr. Lattimore testified, Pricewaterhouse noted that
24 there were issues about the consistency of training
25 between the centers in Atlanta and Birmingham. An

1 examination only of BellSouth's training procedures
2 surely would require more than a month's time, at least
3 for the purposes of this docket, if there were stated
4 concerns about those training procedures.

5 Although the FCC appears to have
6 relied almost exclusively on the Pricewaterhouse
7 attestation for assessing the regionality of
8 pre-ordering processes, the attestation did not reveal
9 some troubling aspects of those processes that were
10 brought out in our Phase One hearing. For example,
11 BellSouth provided contradictory testimony regarding
12 how it updates LFACS. This suggests that CLECs in
13 Tennessee receive different treatment from CLECs in
14 other states no matter how the contradiction in the
15 testimony is resolved.

16 Additionally, I am convinced by the
17 record that BellSouth may have exerted undue influence
18 with regard to the scope of Pricewaterhouse's efforts
19 as well as the accessibility of BellSouth's OSS that
20 was subject to the attestation. For example, BellSouth
21 indicated to Pricewaterhouse the BellSouth employees
22 who could and could not be reviewed by placing balloons
23 over the chairs of the BellSouth employees who were not
24 to participate.

25 Also, in a frustrating twist of events

1 leading up to the appearance of Pricewaterhouse's
2 witnesses at our hearing, BellSouth's legal counsel
3 represented Pricewaterhouse during the Phase One
4 hearing. That is, the client to an independent
5 attestation legally represented the attesting firm
6 while the attesting firm testified on the merits of the
7 client's case.

8 Based on considerations such as these,
9 the Authority's finding in this docket regarding the
10 Pricewaterhouse attestation may provide information not
11 yet considered by the FCC.

12 The Authority's statutory reasons for
13 examining BellSouth's OSS are closely related to those
14 in the Authority's recent performance measures order in
15 Docket 01-00193. Given the connection between the
16 initial examination of monitoring BellSouth's OSS, I
17 also note that the FCC found BellSouth produced
18 regional performance data sufficient to grant interLATA
19 relief in Georgia and Louisiana and not for monitoring
20 BellSouth's performance in those states -- excuse me --
21 and for monitoring BellSouth's. Eliminate the word
22 "not." The FCC goes on to declare, however, that it
23 may use state-specific data when taking enforcement
24 action against BellSouth.

25 Based on my analysis of the record, if

1 the trends in BellSouth's OSS performance across states
2 in 2001 continue, the FCC's logic would allow it to
3 approve a Tennessee 271 application even when
4 BellSouth's performance in Tennessee is below regional
5 levels. Moreover, the fact that the FCC may use
6 state-specific data to take enforcement action against
7 BellSouth, the fact that the FCC uses regional data for
8 monitoring raises questions, in my mind at least, about
9 whether state-specific enforcement would ever be
10 triggered.

11 Thank you. That concludes my
12 comments.

13 CHAIRMAN KYLE: Thank you. Based on,
14 number one, the evidentiary record of OSS; number two,
15 my judgment; and, number three, the approval of
16 Georgia's and Louisiana's 271 application by the
17 Federal Communication Commission, it is my vote that
18 Bell's OSS meets the requirements of Sections 251 and
19 252 of the federal act and fulfills our charge from the
20 Tennessee general assembly to promote competition in
21 Tennessee. This would be another step toward 271,
22 which I feel would be of great benefit to Tennessee
23 consumers.

24 Next case, please. I think we are
25 back on number three.

1 MR. WADDELL: 01-00193.

2 CHAIRMAN KYLE: Do you want to read
3 the docket or do you --

4 MR. WADDELL: It's Tennessee
5 Regulatory Authority, generic docket to establish
6 performance measurements, benchmarks, and enforcement
7 mechanisms for BellSouth Telecommunications, Inc.

8 DIRECTOR GREER: I move to adopt the
9 business rule as proposed by BellSouth for the measure
10 TN-P-14 Percent Timely Loop Modification
11 Deconditioning.

12 For the measure TN-P-16 Service Order
13 Accuracy, I move to adopt the language proposed by
14 BellSouth for a statistically valid sampling technique
15 with the following modification. In deriving the
16 appropriate size for each of the samples associated
17 with the different SQM disaggregation categories,
18 BellSouth should use the formula proposed by the CLEC
19 Coalition.

20 This formula is "N equals T-squared
21 times the population variance times the acceptable
22 error to the negative 2 power." In utilizing the
23 formula, BellSouth should measure the population
24 variance using all available Tennessee-specific
25 historical data for each SQM category of

1 disaggregation. BellSouth also should use 1.96 for the
2 value of "T" and 5 percent for the acceptable error.

3 I would like to note that while
4 sampling will reduce monitoring costs associated with
5 the performance plan, sampling techniques that generate
6 biased samples generally will undermine the accuracy,
7 effectiveness, and efficiency of the performance plan.
8 Even with the audit procedures in place, because
9 BellSouth controls the underlying data and will take
10 the samples, BellSouth has a lot of discretionary
11 ability to influence performance plan results. At the
12 same time, the CLECs can also influence performance
13 plan results to the detriment of BellSouth.

14 As recent events in the energy sector
15 regarding wholesale trading strategies suggest,
16 regulations that allow wholesale providers latitude run
17 the risk of being gamed by industry actions that may
18 conform to the letter of the regulations but
19 nonetheless violate the spirit of the regulations.

20 Because it is impossible to create the
21 necessary logistics for perfect performance plan, I
22 would also like to admonish BellSouth and its
23 competitors to conform their discretionary decisions
24 and behavior to the letter and spirit of Tennessee's
25 performance plan and its laws and regulations.

1 The reason I move this also has a
2 relationship to the comments that I made concerning the
3 importance of sampling techniques in Docket
4 No. 01-00362.

5 CHAIRMAN KYLE: Thank you. I'm in
6 favor and would vote to adopt the business rules as
7 proposed by Bell for the measure TN-P-14, the percent
8 timely loop modifications deconditioning, and the
9 language as proposed by BellSouth for a statistically
10 valid sample with the measure TN-P-16, the service
11 order accuracy. And I'm sure that that was part of
12 your motion, and that's the part that I agree with.

13 DIRECTOR MALONE: I agree with the
14 motion.

15 MR. WADDELL: The next item is number
16 five, 02-00024, BellSouth Telecommunications, Inc.,
17 tariff to modify CCS7 access arrangement.

18 DIRECTOR MALONE: I would -- are there
19 any questions from the parties on this matter?

20 (No response.)

21 DIRECTOR MALONE: We have -- we asked
22 at the last conference that the parties get together.
23 There were four points of difference between the
24 parties or among the parties.

25 Mr. Hicks, I understand that BellSouth

1 has submitted language on two of the four points; is
2 that correct?

3 MR. HICKS: Yes, that's correct.

4 DIRECTOR MALONE: I would move based
5 on -- while all the points have not been resolved, I
6 would -- I would move that BellSouth replace the word
7 "interstate" with the word "intrastate" in Section
8 E.2.3.14(a)(3), that BellSouth resubmit the tariff --
9 that BellSouth resubmit the tariff consistent -- and
10 implement not only the change but also the language it
11 has proposed on the two points that would at least
12 resolve those issues and that with those changes that
13 the tariff be approved.

14 DIRECTOR GREER: Second.

15 CHAIRMAN KYLE: My vote stands from
16 last week.

17 The next case.

18 MR. WADDELL: 02-00125, Ardmore
19 Telephone Company, tariff to provide rate reductions to
20 offset a portion of the 2002 tax credit.

21 DIRECTOR GREER: If the Directors
22 don't mind -- we did this last time -- can we take all
23 of these tariffs together?

24 CHAIRMAN KYLE: No objection.

25 DIRECTOR MALONE: No objections.

1 MR. WADDELL: It would be Items No. 6,
2 7, 8, 9, 10, 11, 12, and 13 on the agenda.

3 DIRECTOR GREER: Is there a
4 representative of the Consumer Advocate here? And I
5 suppose if there's a representative of the companies
6 that wants to be represented, they are free to step
7 forward.

8 (Pause.)

9 DIRECTOR GREER: If you will,
10 Mr. Phillips, introduce yourself for the record.

11 MR. PHILLIPS: Timothy Phillips,
12 Attorney General's office, Consumer Advocate and
13 Protection Division.

14 MR. BREWER: And I'm Ross Brewer on
15 behalf of the companies.

16 DIRECTOR GREER: Mr. Phillips, did the
17 second revised tariff satisfy the concerns raised in
18 the Consumer Advocate's complaint and petition to
19 intervene relative to these eight companies?

20 MR. PHILLIPS: Considering those
21 tariffs as filed, at this point the Consumer Advocate
22 does not wish to pursue its intervention in the matter.

23 DIRECTOR GREER: So you are willing to
24 voluntarily withdraw those complaints and petitions?

25 MR. PHILLIPS: Yes, sir.

1 DIRECTOR GREER: Thank you. In that
2 case then I move to find that the second revised
3 tariffs are consistent with the Act and the Authority's
4 previous rulings in this matter and to approve the
5 second revised tariffs as filed.

6 CHAIRMAN KYLE: Mr. Ross Brewer, did
7 you have any comments you wanted on the record?

8 MR. BREWER: No, ma'am.

9 CHAIRMAN KYLE: I'm in favor.

10 DIRECTOR GREER: Except thank you.

11 DIRECTOR MALONE: I agree.

12 I would like to make a point of
13 privilege, and I think this is the first -- it's not
14 the first time Mr. Brewer has appeared, but it may be
15 the first time that he has made an appearance. And he
16 is a distinguished graduate from the University of
17 Tennessee College of Law, and we're pleased to have you
18 practice before the Agency.

19 MR. BREWER: Thank you,
20 Director Malone. I appreciate it.

21 CHAIRMAN KYLE: Welcome. Good to see
22 you.

23 Next case.

24 MR. WADDELL: Item No. 14 on the
25 agenda, Docket No. 02-00207, UNE-P Coalition, petition

1 of Tennessee UNE-P Coalition to open contested case
2 proceeding to declare unbundled switching and
3 unrestricted unbundled network element. This is to
4 consider the report and recommendation of the hearing
5 officer.

6 DIRECTOR MALONE: The report and
7 recommendation was issued on May 13, 2002, and it
8 followed two other orders in this matter. The report
9 and recommendation I think was issued consistent with
10 the charge given the hearing officer in moving this
11 matter along expeditiously. A coalition yesterday
12 filed a motion to amend petition and motion to consider
13 the hearing officer's first report and recommendation.

14 In light of the fact that this
15 document was filed yesterday -- let me ask, Mr. Hicks,
16 if you could come forward. I have one minor question.

17 MR. HICKS: Guy Hicks on behalf of
18 BellSouth.

19 DIRECTOR MALONE: I don't want to
20 assume too much, but BellSouth didn't submit any
21 comments on the report and recommendation. You have no
22 objections to the report?

23 MR. HICKS: That's correct.

24 DIRECTOR MALONE: I think BellSouth
25 ought to have the opportunity to respond to the motion

1 to amend. Given that it was filed yesterday, that
2 opportunity has not been had. I would suggest that
3 BellSouth be permitted a week from today two o'clock to
4 respond to the motion to amend, and if the Agency
5 wishes that the hearing officer resolve that, I would
6 like to have the Agency's comments on the procedural
7 schedule set forth therein because I think it would be
8 consistent with the original vote to open the docket,
9 to have the procedural matter go forward, especially
10 with respect to discovery, and then the hearing officer
11 will work to resolve the motion.

12 DIRECTOR GREER: I agree with you,
13 Director Malone.

14 CHAIRMAN KYLE: I definitely think
15 Bell needs time to respond, but I'm not clear on the
16 next time this matter is going to come up on the
17 docket. Are you asking for after a week from today
18 after we hear from Bell, then it be put back on the
19 docket, or are you asking that you take this into a
20 hearing matter?

21 DIRECTOR MALONE: No, I'm not
22 requesting that I take this into a hearing. The Agency
23 appointed me as the hearing officer to prepare the
24 matter for resolution. I'm simply asking if consistent
25 with that direction it is the desire of the Agency that

1 I resolve the motion, and that if that is the case,
2 then the hearing officer will simply issue an order on
3 the motion.

4 CHAIRMAN KYLE: That's fine with me.

5 MR. WADDELL: The next item is
6 02-00287, Entergy Arkansas, Inc., tariff filing by
7 Entergy Arkansas, Inc., for annual revision to Energy
8 Cost Rate to Recovery Rider ECR.

9 DIRECTOR MALONE: Move to approve.

10 CHAIRMAN KYLE: I'm in agreement.

11 DIRECTOR GREER: Yes.

12 DIRECTOR MALONE: Chairman Kyle, if I
13 may regress back to Item 14. The Agency has asked that
14 BellSouth file a response to the motion a week from
15 today and asked that if the coalition chooses, then it
16 may end the comments on the motion at two o'clock on
17 Thursday.

18 CHAIRMAN KYLE: Without objection,
19 that's fine.

20 MR. WADDELL: 02-00437, BellSouth
21 Telecommunications, Inc., petition for expedited review
22 of Central Office Code Denial.

23 CHAIRMAN KYLE: Dr. Roberson?

24 MR. ROBERSON: Thank you, Director
25 Kyle -- Chairman Kyle, Directors Malone and Greer.

1 My name is Eddie Roberson with the
2 staff. BellSouth filed a petition for an expedited
3 review of the growth code denial by the North American
4 Numbering Council. BellSouth has been requested to
5 provide 3,000 sequenced numbers to the Middle Tennessee
6 Medical Center located in Murfreesboro, Tennessee. The
7 medical center has requested this demand to meet their
8 expansion demands and also to simplify their
9 numbering -- their telephone prefix numbering.

10 BellSouth filed this request with
11 NANPA. NANPA refused -- according to the FCC rules --
12 according to the FCC rules, the FCC Docket No. 00-104
13 and NANPA Central Office Code Guidelines, the Tennessee
14 Regulatory Authority has jurisdiction in appellate
15 consideration of its denial. BellSouth filed the
16 petition with the Authority requesting a review of and
17 appeal of the NANPA's rejection of its growth code.

18 CHAIRMAN KYLE: Your recommendation?

19 MR. ROBERSON: The staff
20 recommendation is to grant the BellSouth petition to
21 overturn NANPA'S decision for -- to meet the Middle
22 Tennessee Medical Center's request for 3,000 sequenced
23 numbers.

24 CHAIRMAN KYLE: I would be in
25 agreement. I think that this would make it more

1 beneficial to the community as a whole, and thank you
2 for your extremely hard diligent work on this matter.

3 DIRECTOR GREER: I agree.

4 DIRECTOR MALONE: I agree as well.

5 MR. WADDELL: 02-00485, Tennessee
6 Regulatory Authority, alleged violations of TCA
7 65-40-401, et. seq., the Do Not Call Sales Solicitation
8 Law, and Rules, Chapter 1220-4-11, by Adventis, Inc.,
9 doing business as Independent Systems, LLC, doing
10 business as The Big Lot. This is a consideration of a
11 settlement.

12 CHAIRMAN KYLE: Dr. Roberson?

13 MR. ROBERSON: The Authority -- thank
14 you. The Authority has received three separate
15 complaints against Adventis alleging that the company
16 violated TCA Section 65-4-401, et seq. Adventis was
17 not registered with the Authority at the time but has
18 since registered with the Authority on April the 15th,
19 2002. The Authority has not received any additional do
20 not call complaints against Adventis since April the
21 2nd, 2002.

22 Specifically, this settlement requires
23 Adventis to make a payment of \$5,000 to the Authority
24 along with the assurances from the company that it will
25 fully comply with all applicable state law.

1 Specifically, the terms of the settlement require
2 Adventis to pay \$2,000 to the Authority no later than
3 30 days from the date the Authority ratifies the
4 settlement with the remaining balance to be paid in
5 three equal installments no later than the first
6 business day of each month for the next three months.

7 And a representative from Adventis,
8 Mr. Peterman, counsel for Adventis, is on the telephone
9 if you have any questions.

10 DIRECTOR MALONE: Move to approve the
11 settlement.

12 CHAIRMAN KYLE: Thank you for being on
13 the phone with us. I have no questions and appreciate
14 the cooperation and working together, and I would vote
15 for approval.

16 DIRECTOR GREER: I agree.

17 MR. WADDELL: 02-00515, Easton Telecom
18 Services, Inc., petition for authority of Easton
19 Telecom Services, LLC, to acquire certain assets of
20 Easton Telecom Services, Inc.

21 DIRECTOR GREER: Move to approve.

22 CHAIRMAN KYLE: I agree.

23 DIRECTOR MALONE: I agree as well, and
24 consistent with past practice, would ask that the
25 letter go out under "Easton, Inc."

1 MR. WADDELL: 02-00525, XO --

2 DIRECTOR GREER: By the way, if
3 there's any question about that, I agree with what
4 Director Malone just said. Thank you.

5 MR. WADDELL: XO Tennessee, Inc.,
6 application for approval of the transfer of control of
7 XO Communications, Inc., pursuant to a corporate
8 restructuring involving the sale of new common stock.

9 DIRECTOR GREER: Move to approve.

10 CHAIRMAN KYLE: Vote yes.

11 DIRECTOR MALONE: I agree.

12 MR. WADDELL: The next item on the
13 agenda are several contract service arrangements listed
14 for your consideration.

15 DIRECTOR GREER: Move to waive the
16 notice requirement to approve.

17 CHAIRMAN KYLE: I vote yes.

18 DIRECTOR MALONE: I vote yes as well.

19 MR. WADDELL: The next items on the
20 agenda are interconnection and resale agreements. The
21 first two listed, 02-00236, should include in the
22 caption "doing business as Frontier Communications
23 Company of the Volunteer State," and 02-00237 should
24 also include a "d/b/a Frontier Communications Company
25 of Tennessee." Other than that, these are for your

1 consideration.

2 CHAIRMAN KYLE: Thank you. Move to
3 approve.

4 DIRECTOR GREER: I approve.

5 DIRECTOR MALONE: You called them all
6 out; right, Mr. Waddell?

7 MR. WADDELL: Yes.

8 DIRECTOR MALONE: 02-00341 the
9 negotiated agreement is inconsistent with TRA rulings,
10 specifically on the currently combined, and I would
11 just like to -- the order to reflect that.

12 DIRECTOR GREER: Well, I'm sorry I
13 didn't pick that up because normally what I have done
14 is voted to let it go into effect without a vote, and I
15 would -- I would like to take the same position I have
16 before. I'm going to withdraw my vote to approve on
17 that one. I'm sorry. I didn't pick that up, Director
18 Malone.

19 DIRECTOR MALONE: I will join to do
20 the same.

21 DIRECTOR GREER: But that does not
22 prevent it from going into effect.

23 CHAIRMAN KYLE: Is that it?

24 MR. WADDELL: We have a cancellation
25 per company request.

1 CHAIRMAN KYLE: Move to approve.

2 DIRECTOR GREER: Second.

3 DIRECTOR MALONE: Agree.

4 MR. WADDELL: And Director Greer
5 brought up an item for miscellaneous business, Docket
6 No. 01-00868, complaint of XO Tennessee, Inc., and
7 Access Integrated Networks, Inc., against BellSouth
8 Telecommunications, Inc.

9 DIRECTOR GREER: We had asked for some
10 comments, and we have received those. And based on the
11 comments, I would like to move that we review the
12 hearing officer's initial order by considering the
13 following two-part question. Number one, whether there
14 is sufficient evidence in the record to support the
15 hearing officer's finding that BellSouth is guilty of
16 unjust discrimination under TCA 65-4-122(a), and, if
17 so, number two, whether the district attorney is the
18 proper party to pursue a violation of TCA 65-4-122(a).

19 As a part of this motion, I would
20 direct the parties until two p.m. on Tuesday, May 28,
21 2002 to file briefs on this two-part issue with no
22 reply briefs to be filed, and I would also ask -- if
23 satisfactory with the Directors, if we set May 31st for
24 deliberations.

25 MR. HICKS: May I comment, please?

1 CHAIRMAN KYLE: Certainly.

2 MR. HICKS: I don't know what
3 Mr. Walker would say, but I would just request that we
4 have a couple of additional days to file briefs since
5 Tuesday is the day after the holiday.

6 CHAIRMAN KYLE: Certainly. I would be
7 in agreement.

8 DIRECTOR GREER: Well, let me first
9 ask my fellow Directors if they've got a problem with
10 deliberating on May 31st?

11 CHAIRMAN KYLE: Let me just say this,
12 I'm scheduled to be at SEARUC, and I just don't know
13 that schedule at this time, but I can certainly let
14 your office know. I know SEARUC doesn't begin till
15 maybe the 2nd; however, I'm meeting with some groups on
16 some issues that could affect Tennessee, and I will
17 have to find out what my schedule is and let you know.

18 Do you have an alternative date?

19 DIRECTOR GREER: Well, my concern is
20 that the next alternative date would obviously have to
21 be the 11th, and my concern is in order for this set of
22 Directors to complete this docket, that might cause us
23 some problems to wait that late to finish our
24 deliberations.

25 And it could be that the Directors

1 make no change in the hearing officer's report at all,
2 which in that case may not make any difference, but
3 if -- the next scheduled conference is June the 11th.
4 The problem with us going to SEARUC and leaving on the
5 1st, basically that week is gone, and so that's the
6 reason I picked that Friday, the 31st.

7 CHAIRMAN KYLE: Commissioner Greer, I
8 may already be gone. I will just have to let your
9 office know.

10 DIRECTOR GREER: Well, you don't need
11 to let me know. You need to let Mr. Waddell know.

12 Well, then I'll amend my motion then
13 to allow briefs to be filed by Wednesday May 28th --
14 29th, let's say, at 4:00, and ask the executive
15 director to find a satisfactory date to deliberate.

16 CHAIRMAN KYLE: Thank you.

17 DIRECTOR MALONE: I have no
18 objections.

19 CHAIRMAN KYLE: Thank you.

20 Any further business?

21 MR. WADDELL: That's all the items.

22 CHAIRMAN KYLE: We're adjourned.

23 (Proceedings adjourned at
24 10:57 a.m.)
25

1 REPORTER'S CERTIFICATE

2 STATE OF TENNESSEE)

3 COUNTY OF DAVIDSON)

4 I, Christina M. Rhodes, Registered
5 Professional Reporter, Certified Court Reporter, and
6 Notary Public at Large, hereby certify that I reported
7 the foregoing proceedings at the time and place set
8 forth in the caption thereof; that the proceedings were
9 stenographically reported by me; and that the foregoing
10 proceedings constitute a true and correct transcript of
11 said proceedings to the best of my ability.

12 I FURTHER CERTIFY that I am not
13 related to any of the parties named herein, nor their
14 counsel, and have no interest, financial or otherwise,
15 in the outcome or events of this action.

16 IN WITNESS WHEREOF, I have hereunto
17 affixed my official signature and seal of office this
18 22nd day of May, 2002.

19
20
21
22 _____
CHRISTINA M. RHODES
REGISTERED PROFESSIONAL REPORTER
23 AND NOTARY PUBLIC FOR THE STATE
OF TENNESSEE AT LARGE

24 My Commission Expires:

25 January 28, 2006

Minutes of the Directors' Conference
of Tuesday, May 21, 2002, stand approved.

Chairman Sara Kyle

Director Lynn Greer

Director Melvin Malone